

Message Text

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DRAFTED BY D/LOS:RTSCULLY:MZ/LCW

APPROVED BY D/LOS:RTSCULLY

EUR/WE-MR. BEIGEL

EA/J-MR. DEMING

EUR/NE-MR. WORRELL

L/OES-MR. BURTON

EUR/SOV-MR. COLBERT

OES/OFA-CDR. BUSBY(INFO)

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C O N F I D E N T I A L STATE 214619

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS: GROUP OF FIVE MEETING IN NEW YORK

1. THERE FOLLOWS TEXT OF US PROPOSED AMENDMENTS AND COMMENTS ON THE COMMITTEE I SINGLE NEGOTIATING TEXT FOR DIS-CONFIDENTIAL

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TRIBUTION TO MEMBERS OF THE GROUP OF FIVE. (GROUP OF FIVE MEETING BEGINNING IN NEW YORK SEPT 15 WILL DISCUSS COMMITTEE I, COMMITTEE II AND DISPUTE SETTLEMENT ISSUES).

2. EMBASSIES ARE REQUESTED TO DELIVER TEXT OF THESE PROPOSED AMENDMENTS AND COMMENTS TO HOST GOVERNMENT LOS OFFICIALS AS SOON AS POSSIBLE. IN DELIVERING THEM YOU SHOULD NOTE THAT THEY ARE PRELIMINARY AND MANY OF ISSUES CONCERNED REMAIN UNDER USG REVIEW. YOU SHOULD ALSO NOTE THAT WE ARE PREPARING ANOTHER PAPER ON COMMITTEE I (DEEP SEABED) MATTERS RELATING TO THE EXPLOITATION SYSTEM (ARTICLE 22 AND THE BASIC CONDITIONS OF THE SINGLE NEGOTIATING TEXT). IN ADDITION, AMENDMENTS AND COMMENTS ON COMMITTEE II AND DISPUTE SETTLEMENT ARE IN FINAL STAGES OF PREPARATION AND WILL BE FORTHCOMING SHORTLY.

BEGIN TEXT:

PROPOSED AMENDMENTS AND COMMENTS TO THE COMMITTEE I SINGLE NEGOTIATING TEXT

NOTE: THE FOLLOWING AMENDMENTS ARE PRELIMINARY AND DO NOT REPRESENT AN EXHAUSTIVE OR FINAL LIST OF ALL THE CHANGES THAT MAY BE REQUIRED IN THE COMMITTEE I SINGLE NEGOTIATING TEXT.

ARTICLE 1(II)

AMENDMENT: " 'ACTIVITIES IN THE AREA' MEANS ALL ACTIVITIES OF EXPLORATION AND EXPLOITATION OF THE RESOURCES OF THE AREA, AS WELL AS OTHER DIRECTLY RELATED ACTIVITIES IN THE AREA."

COMMENT: THE POWERS OF THE INTERNATIONAL SEABED RESOURCE AUTHORITY MUST BE RESTRICTED TO RESOURCE RECOVERY OPERATIONS ON THE SEABED BEYOND THE LIMITS OF NATIONAL JURISDICTION. HENCE, THE CRITICAL CONCERN OF THE UNITED STATES IN AMENDING ARTICLE 1(II) IS TO ENSURE THAT THE TERM "ACTIVITIES IN THE AREA" DOES NOT INCORPORATE ACTIVITIES OTHER THAN EXPLORATION AND EXPLOITATION AND DIRECTLY RELATED ACTIVITIES, AND WHICH OCCUR IN THE INTERNATIONAL CONFIDENTIAL

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AREA. SCIENTIFIC RESEARCH IS NOT AMONG SUCH ACTIVITIES AND MUST NOT BE SUBJECT TO THE JURISDICTION OF THE AUTHORITY.

NOTE: THE COMMITTEE I SINGLE NEGOTIATING TEXT CONTAINS WIDESPREAD INCONSISTENCIES IN THE USE OF THE TERM "ACTIVITIES IN THE AREA." THESE INCONSISTENCIES WILL NEED TO BE CORRECTED AT A LATER STAGE.

ARTICLE 1(IV)

AMENDMENT: "MINERAL RESOURCES MEANS ANY OF THE FOLLOWING SUBSTANCES, WHICH ARE DIVIDED INTO FOUR CATEGORIES:

(A) LIQUID OR GASEOUS SUBSTANCES, SUCH AS PETROLEUM, NATURAL GAS, CONDENSATE, HELIUM NITROGEN, CARBON DIOXIDE, STEAM, HOT OR COLD WATER, AND SUBSTANCES EXTRACTED IN LIQUID FORM OR IN SOLUTION, SUCH AS SULFUR AND SALTS;

(B) USEFUL HARD MINERALS, SUCH AS FERROMANGANESE NODULES, OCCURRING ON THE SURFACE OF THE SEABED OR AT DEPTHS OF LESS THAN THREE METERS BENEATH THE SEABED SURFACE;

(C) SOLID MINERALS BENEATH THE OCEAN FLOOR AT DEPTHS GREATER THAN THREE METERS FROM THE SEABED SURFACE;

(D) METAL-BEARING MUDS AND ASSOCIATED BRINES."

COMMENT: THE ABOVE AMENDMENTS ARE DRAFTING CHANGES IN ORDER TO MAKE THE DEFINITION OF MINERALS CATEGORIES MORE PRECISE.

ARTICLE 2

AMENDMENT: A SPECIAL PROCEDURE FOR REGISTERING AND RESOLVING DISPUTES CONCERNING THE OUTER BOUNDARIES OF COASTAL STATE JURISDICTION, WHICH INCLUDES AN INDEPENDENT BOUNDARY REVIEW COMMISSION, SHOULD BE INCLUDED PREFERABLY IN PART II OF THE SINGLE NEGOTIATING TEXT.

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SUBSTITUTE "INTERNATIONAL SEABED RESOURCE AUTHORITY" FOR "INTERNATIONAL SEABED AUTHORITY" IN PARAGRAPH 2 AND ANYWHERE ELSE IT APPEARS IN THE SINGLE NEGOTIATING TEXT.

COMMENT: THE PROPOSED AMENDMENT TO PARAGRAPH 2 CLARIFIES THAT THE AUTHORITY WILL BE ESTABLISHED TO IMPLEMENT THE REGIME FOR RESOURCE EXPLOITATION SET OUT IN THIS CHAPTER.

NOTE: IN THE COMMITTEE I SINGLE NEGOTIATING TEXT, THE TERM "CONVENTION" IS USED TO REFER SOMETIMES TO THE ENTIRE LAW OF THE SEA CONVENTION, SOMETIMES ONLY TO THE CHAPTER OF THAT CONVENTION WHICH RELATES TO THE INTERNATIONAL AREA. THIS INCONSISTENCY WILL NEED TO BE CORRECTED AT A LATER DATE.

ARTICLE 4, PARAGRAPH 2

AMENDMENT: SUBSTITUTE "RESOURCES OF" FOR "MINERALS IN THEIR RAW OR PROCESSED FORM DERIVED FROM."

INSERT "SUCH" BEFORE "RIGHTS" IN LAST SENTENCE OF

PARAGRAPH 2.

COMMENT: AS DRAFTED, ARTICLE 4, PARAGRAPH 2 CONFUSES THE QUESTION OF WHEN TITLE TO MINERAL RESOURCES PASSES TO THE OPERATOR. THIS ISSUE, ALTHOUGH EXTREMELY IMPORTANT TO A SATISFACTORY RESOURCE REGIME, CAN MORE APPROPRIATELY BE DEALT WITH IN THE BASIC CONDITIONS, WHILE ARTICLE 4 ADDRESSES THE BROADER ISSUE OF RIGHTS WITH RESPECT TO RESOURCES IN SITU.

THE ADDITION OF "SUCH" IN THE LAST SENTENCE OF PARAGRAPH 2 CLARIFIES THAT THE RIGHTS REFERRED TO ARE THOSE WITH RESPECT TO RESOURCES.

ARTICLE 5

AMENDMENT: INCLUDE A REFERENCE TO THE "APPLICABLE PRINCIPLES OF INTERNATIONAL LAW."

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COMMENT: PREVIOUS FORMULATIONS OF THIS ARTICLE, INCLUDING THE DECLARATION OF PRINCIPLES, CONTAINED A REFERENCE TO THE APPLICABLE PRINCIPLES OF INTERNATIONAL LAW. SUCH A REFERENCE IS ESSENTIAL IN VIEW OF THE LARGE BODY OF LAW APPLICABLE TO THE BEHAVIOR OF STATES WHICH MAY NOT BE SPECIFICALLY REFERENCED IN THE NEW CONVENTION OR THE UN CHARTER.

ARTICLE 6

AMENDMENT: "ACTIVITIES IN THE AREA SHALL BE GOVERNED BY THE PROVISIONS OF THIS CHAPTER. THE AUTHORITY SHALL HAVE THE FUNCTIONS WITH REGARD TO THOSE ACTIVITIES WHICH ARE CONFERRED ON IT BY THESE ARTICLES."

COMMENT: AS DRAFTED, ARTICLE 6 IMPLIES THAT SOME "ACTIVITIES IN THE AREA" WOULD BE PROHIBITED IN THE EVENT THAT THE AUTHORITY DECIDES THAT IT IS NOT NECESSARY TO SPECIFICALLY REGULATE THEM OR PROMULGATE REGULATIONS CONCERNING THEM. THE EXPLOITATION OF THE RESOURCES OF THE AREA MUST NOT BE IMPEDED BY THE FAILURE OF THE AUTHORITY TO ESTABLISH REGULATIONS.

ARTICLE 7

AMENDMENT: DELETE FULL-STOP AND ADD "IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 18."

COMMENT: SEE COMMENT UNDER ARTICLE 18.

ARTICLE 8

AMENDMENT: DELETE PARAGRAPH 1.

PLACE FULL-STOP AFTER "DISCRIMINATION" IN PARAGRAPH 2 AND DELETE REMAINDER OF PARAGRAPH.

COMMENT: THERE IS NO IMPORTANT DIFFERENCE BETWEEN ARTICLE 8, PARAGRAPH 1'S PROVISION THAT THE AREA IS

RESERVED EXCLUSIVELY FOR PEACEFUL PURPOSES AND ARTICLE 8, CONFIDENTIAL

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PARAGRAPH 2'S PROVISION THAT THE AREA IS OPEN TO USE EXCLUSIVELY FOR PEACEFUL PURPOSES. DELETION OF PARAGRAPH 1 AVOIDS REDUNDANCY.

PARAGRAPH 2 RECOGNIZES THE IMPORTANT PRINCIPLE THAT THE INTERNATIONAL AREA IS OPEN TO ALL STATES ON A NON-DISCRIMINATORY BASIS, PROVIDED THEIR ACTIVITIES ARE FOR PEACEFUL PURPOSES. ARTICLE 8 APPLIES TO ALL ACTIVITIES IN THE INTERNATIONAL AREA, WHETHER OR NOT THEY CONCERN RESOURCES, WHILE ARTICLE 6 APPLIES TO "ACTIVITIES IN THE AREA." AS DISCUSSED UNDER ARTICLE 1(II), THE SCOPE OF THE AUTHORITY'S REGULATORY POWERS MUST BE CONFINED TO "ACTIVITIES IN THE AREA" AND CANNOT EXTEND TO NONRESOURCE ACTIVITIES IN THE AREA. THUS, THE PROPOSED AMENDMENT TO PARAGRAPH 2 EMPHASIZES THE DIFFERENCE BETWEEN ARTICLE 6 AND ARTICLE 8.

ARTICLE 9

AMENDMENT: (ARTICLE 9 IS UNACCEPTABLE IN ITS PRESENT FORM AND REQUIRES FURTHER NEGOTIATION.)

COMMENT: THE PRESENT TEXT OF ARTICLE 9 REQUIRES SUBSTANTIAL REVISION IN ORDER TO EMBODY THE APPROPRIATE RESOURCE OBJECTIVES OF THE AUTHORITY.

ARTICLE 10

AMENDMENT: DELETE "PROVIDE FOR IN THIS CONVENTION" FROM THE FIRST SENTENCE OF PARAGRAPH 1.

DELETE THE SECOND SENTENCE OF PARAGRAPH 1.

DELETE "THROUGH THE AUTHORITY" FROM SUBPARAGRAPH (B) OF PARAGRAPH 3.

PLACE FULL-STOP AFTER "RESEARCH" AND DELETE REMAINDER OF SUBPARAGRAPH (C) OF PARAGRAPH 3.

COMMENT: THE RIGHT TO CONDUCT SCIENTIFIC RESEARCH

IN THE AREA DOES NOT FLOW FROM THIS CHAPTER, AND THE FIRST
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AMENDMENT TO PARAGRAPH 1 IS INTENDED TO CLARIFY THIS POINT.

THE AUTHORITY MUST HAVE NO POWERS WITH RESPECT TO
SCIENTIFIC RESEARCH IN THE AREA, EXCEPT THAT IT MAY CON-
DUCT SCIENTIFIC RESEARCH ON ITS OWN BEHALF.

OTHER REFERENCES TO THE AUTHORITY IN PARAGRAPHS 1

AND 3 MUST BE DELETED.

ARTICLE 11

AMENDMENT: DELETE "MEASURES DIRECTED TOWARDS THE
ACCELERATION OF DOMESTIC TECHNOLOGY OF DEVELOPING
COUNTRIES AND" FROM SUBPARAGRAPH (B).

COMMENT: THIS AMENDMENT DELETES AN AMBIGUOUS PHRASE
THAT APPEARS TO BEAR NO RELATIONSHIP TO TECHNOLOGY RE-
LATED TO "ACTIVITIES OF THE AREA."

ARTICLE 12

AMENDMENT: AMEND THE CHAPEAU SO AS TO SPECIFY THAT
THE RULE-MAKING PROCEDURE TO BE ESTABLISHED UNDER ARTICLE
28 IS UTILIZED IN PROMULGATING RULES UNDER ARTICLE 12.

COMMENT: THIS AMENDMENT IS A DRAFTING CHANGE IN
ORDER TO ENSURE CONSISTENCY.

ARTICLE 13

AMENDMENT: AMEND ARTICLE 13 TO INCLUDE A REFERENCE
TO THE AUTHORITY'S RULE-MAKING SYSTEM AS IN ARTICLE 12.

DELETE REMAINDER OF ARTICLE FOLLOWING "SUPPLEMENT"
AND SUBSTITUTE "THE APPLICABLE INTERNATIONAL LAW."

COMMENT: THE PROPOSED AMENDMENTS ARE DRAFTING
CHANGES.

ARTICLE 14
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AMENDMENT: INSERT "DEPOSITS" AFTER "RESOURCES" IN
THE FIRST LINE OF THE FIRST PARAGRAPH.

COMMENT: THE APPLICATION OF ARTICLE 14 SHOULD BE

RESTRICTED TO THOSE CASES IN WHICH, FOR INSTANCE, A HYDROCARBON DEPOSIT OR A DISCRETE NODULE DEPOSIT LIE ASTRIDE THE BOUNDARY. WITH THE EXCEPTION OF THESE SITUATIONS, COASTAL STATES IN THE REGION OF "ACTIVITIES IN THE AREA" SHOULD HAVE NO SPECIAL RIGHTS WITH RESPECT TO SUCH ACTIVITIES.

ARTICLE 16

AMENDMENT: PARAGRAPH 2(III) SHOULD BE MADE CONSISTENT WITH OTHER PROVISIONS IN THE SINGLE NEGOTIATING TEXT CONCERNING SAFETY ZONES AROUND INSTALLATIONS.

COMMENT: THE PROPOSED AMENDMENT IS FOR DRAFTING CONSISTENCY.

ARTICLE 17

AMENDMENT: DELETE "AND THEIR MEMBERS" AND "OR ON THEIR BEHALF" FROM THE SECOND SENTENCE OF PARAGRAPH 1.

PLACE A FULL-STOP AFTER "LIABILITY" IN THE LAST SENTENCE OF PARAGRAPH 1 AND DELETE THE REMAINDER OF THAT SENTENCE. ADD A SENTENCE TO PARAGRAPH 1 REQUIRING STATES TO COOPERATE IN DEVELOPING RULES RELATING TO LIABILITY FOR "ACTIVITIES IN THE AREA."

PARAGRAPH 2 NEEDS TO BE CLARIFIED.

COMMENT: THE FIRST AMENDMENT IS PROPOSED BECAUSE IT SEEMS UNREASONABLE TO IMPOSE RESPONSIBILITIES ON MEMBERS OF INTERNATIONAL ORGANIZATIONS WHICH HAVE INTERNATIONAL LEGAL PERSONALITY FOR ACTIONS OVER WHICH THEY MAY HAVE LITTLE CONTROL.

THIS ARTICLE RAISES SEVERAL ISSUES REGARDING THE CONFIDENTIAL

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LIABILITY OF STATES WHICH NEED TO BE CLARIFIED. THE WHOLE QUESTION OF LIABILITY FOR DAMAGE IS SO COMPLEX THAT IT MAY REQUIRE A SEPARATE AND FUTURE CONVENTION, THERE MAY BE A NEED FOR FURTHER AMENDMENTS TO ARTICLE 17. IT DOES NOT APPEAR TO BE APPROPRIATE TO PREJUDICE THAT NEGOTIATION WITH A GENERAL REFERENCE TO THE LIABILITY OF STATES, ALTHOUGH IT WOULD BE DESIRABLE TO REQUIRE STATES TO COOPERATE IN DEVELOPING SUCH RULES.

ARTICLE 18

AMENDMENT: (AMEND TO DESCRIBE PRECISELY THE SPECIFIC KINDS OF SPECIAL CONSIDERATION TO BE ACCORDED TO DEVELOPING COUNTRIES WHICH MAY BE UNDERTAKEN BY THE AUTHORITY

(THIS ISSUE REQUIRES FURTHER NEGOTIATION).)

COMMENT: THE AUTHORITY MUST BE REQUIRED TO ACT IN A NONDISCRIMINATORY MANNER, EXCEPT IN SPECIFICALLY DESCRIBED RESPECTS WHERE SPECIAL CONSIDERATION IN FAVOR OF DEVELOPING COUNTRIES IS AN AGREED OBJECTIVE, SUCH AS REVENUES. IT IS EXTREMELY IMPORTANT TO LOCALIZE IN ONE ARTICLE THE NEGOTIATION ON THE QUESTION OF SPECIAL CONSIDERATION IN FAVOR OF DEVELOPING COUNTRIES.

FOR THE TIME BEING, ARTICLE 18 WOULD APPEAR TO BE THE MOST APPROPRIATE LOCATION FOR THIS NEGOTIATION. GENERAL AND AMBIGUOUS TERMS, SUCH AS "PARTICIPATION" AND "BENEFITS," MUST BE PRECISELY DEFINED SO THAT, FOR INSTANCE, DISCRIMINATION IN GRANTING RIGHTS OF ACCESS TO ENGAGE IN "ACTIVITIES IN THE AREA" IS PROHIBITED.

ARTICLE 19

AMENDMENT: DELETE ENTIRE ARTICLE.

COMMENT: THE SUBJECT OF THIS ARTICLE IS OF CONCERN TO ONLY A SMALL NUMBER OF STATES AND IS VERY CONTENTIOUS.

ARTICLE 20

AMENDMENT: INSERT "RESOURCE" BEFORE "SEA-BED" IN CONFIDENTIAL

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PARAGRAPH 1.

COMMENT: THIS AMENDMENT IS CONSISTENT WITH THE PROPOSED CHANGE TO ARTICLE 2, PARAGRAPH 2.

ARTICLE 21, PARAGRAPH 1

AMENDMENT: "THE AUTHORITY IS THE ORGANIZATION THROUGH WHICH STATES PARTIES JOINTLY ADMINISTER AND MANAGE THE RESOURCES OF THE AREA IN ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER."

COMMENT: PARAGRAPH 1 OF THIS ARTICLE RAISES SEVERAL PROBLEMS CONCERNING THE SCOPE OF THE AUTHORITY'S REGULATORY MANDATE. FIRST, IT REFERS TO "ADMINISTERING THE AREA," RATHER THAN THE RESOURCES OF THE AREA. AS DISCUSSED PREVIOUSLY, IT IS IMPERATIVE THAT THE SCOPE OF THE AUTHORITY'S REGULATION BE RESTRICTED TO "ACTIVITIES IN THE AREA." SECOND, THE PARAGRAPH REFERS TO THE AUTHORITY'S POWER TO "CONTROL THE ACTIVITIES OF THE AREA." THE CONCEPT OF "CONTROL" WILL NEED TO BE ELABORATED IN THE BASIC CONDITIONS AND SHOULD NOT APPEAR AT THIS STAGE IN THE TEXT.

ARTICLE 22

AMENDMENT: (ARTICLE 22, TOGETHER WITH ANNEX I (BASIC CONDITIONS), CONSTITUTES THE BASIC EXPLOITATION SYSTEM THAT WILL GOVERN "ACTIVITIES IN THE AREA." IN THEIR PRESENT FORM, NEITHER ARTICLE 22 NOR THE BASIC CONDITIONS REPRESENTS AN ADEQUATE BASIS FOR NEGOTIATION. FURTHER CONSULTATIONS WILL NEED TO BE HELD ON THESE

ARTICLES BEFORE AMENDMENTS CAN BE PROPOSED.)

ARTICLE 23

AMENDMENT: AMEND PARAGRAPH 1 OF ARTICLE 23 SO AS TO REQUIRE THE AUTHORITY TO GIVE PRIORITY AT ALL TIMES TO THE OBJECTIVE OF PROMOTING AND ENCOURAGING DEVELOPMENT.

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AMEND PARAGRAPH 2 TO PROHIBIT DISCRIMINATION IN THE EXERCISE OF THE AUTHORITY'S POWERS AND FUNCTIONS AS WELL AS IN "THE GRANTING OF OPPORTUNITIES", EXCEPT THAT SPECIAL CONSIDERATION MAY BE GIVEN TO DEVELOPING COUNTRIES IN THOSE MATTERS REFERRED TO IN ARTICLE 18 AS AMENDED. AMEND THE SECOND SENTENCE TO PARAGRAPH 2 TO INCLUDE A CROSS-REFERENCE TO ARTICLE 18.

DELETE PARAGRAPH 3.

COMMENT: AS PRESENTLY DRAFTED, PARAGRAPH 1 CONTAINS TWO POTENTIALLY CONFLICTING OBJECTIVES, SINCE MAXIMIZING FINANCIAL BENEFITS MAY RESULT IN RESTRICTING PRODUCTION. PROMOTING DEVELOPMENT MUST BE THE PRINCIPLE RESOURCE OBJECTIVE PURSUED BY THE AUTHORITY.

THE AMENDMENTS TO PARAGRAPH 2 ARE CONSISTENT WITH THE DISCUSSION UNDER ARTICLE 18.

PARAGRAPH 3 IS DUPLICATIVE OF LANGUAGE IN ARTICLE 9.

ARTICLE 24

AMENDMENT: ADD TO ARTICLE 24 A PROVISION THAT REQUIRES THE ORGANS OF THE AUTHORITY TO EXERCISE ONLY THOSE POWERS SPECIFICALLY ENTRUSTED TO THEM BY THIS CHAPTER.

(THE QUESTION OF THE STATUS OF THE ENTERPRISE IN RELATION TO OTHER ORGANS OF THE AUTHORITY REQUIRES FURTHER NEGOTIATION.)

COMMENT: THERE MUST BE A CLEAR SEPARATION OF POWERS

AMONG THE AUTHORITY'S ORGANS IN ORDER TO PREVENT OVERLAPPING ACTIVITIES. MOREOVER, THIS CHAPTER MUST PROVIDE THAT THE AUTHORITY CAN ONLY EXERCISE THOSE POWERS EXPRESSLY CONFERRED UPON IT IN ORDER TO AVOID EFFORTS BY THE AUTHORITY TO DERIVE ADDITIONAL POWER AND JURISDICTION.

ARTICLE 25, PARAGRAPH 6

(THE VOTING PROCEDURES OF THE ASSEMBLY REPRESENT AN
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ESSENTIAL ELEMENT OF AN ACCEPTABLE DEEP SEABED ACCOMMODATION. THE PRESENT PROVISION IN PARAGRAPH 6 IS UNACCEPTABLE AND REQUIRES FURTHER NEGOTIATION.)

ARTICLE 25, PARAGRAPH 8

AMENDMENT: SUBSTITUTE "ONE-FOURTH" FOR "ONE-THIRD";
SUBSTITUTE "WHICH SHALL BE RENDERED WITHIN A PERIOD OF SIX MONTHS FROM RECEIPT OF THE REQUEST BY THE TRIBUNAL" FOR "OR FOR A PERIOD OF SIX MONTHS FROM THE RECEIPT OF THE REQUEST, WHICHEVER IS EARLIER."

COMMENT: THE PROPOSED AMENDMENTS ARE ESSENTIAL IF THIS PARAGRAPH IS TO AFFORD ACCEPTABLE PROTECTIONS TO GROUPS OF STATES WHICH MAY BELIEVE THAT THE MAJORITY OF THE AUTHORITY'S MEMBERS SUPPORT AN ULTRA VIRES ACTION.

ARTICLE 26, PARAGRAPH 1

AMENDMENT: SUBSTITUTE "PLENARY" FOR "SUPREME POLICY MAKING."

DELETE SECOND SENTENCE OF THIS PARAGRAPH.

COMMENT: PARAGRAPH 1 OF ARTICLE 26 RAISES THE CRITICAL QUESTION OF THE DEGREE OF POWER WHICH WILL BE GRANTED THE ASSEMBLY OF THE AUTHORITY. IT IS IMPERATIVE THAT THE ASSEMBLY BE EMPOWERED TO TAKE IMPORTANT DECISIONS ONLY IN SPECIFIED AREAS, SUCH AS THE BUDGET OF THE AUTHORITY AND THE APPOINTMENT OF CERTAIN OFFICIALS, AND THEN ONLY ON THE RECOMMENDATION OF THE COUNCIL. IN ALL OTHER AREAS, THE ASSEMBLY SHOULD HAVE ONLY RECOMMENDATORY POWERS.

ARTICLE 26, PARAGRAPH 2

AMENDMENT: SUBSTITUTE "BE" FOR "INCLUDE."

COMMENT: THE LISTING OF THE ASSEMBLY'S POWERS MUST BE EXHAUSTIVE.
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ARTICLE 26, PARAGRAPH 2(IV)

AMENDMENT: DELETE THIS SUBPARAGRAPH.

COMMENT: THE AUTHORITY SHOULD BE SELF-FINANCING.
IN THE EARLY YEARS OF ITS OPERATIONS, WHEN REVENUES ARE
INSUFFICIENT TO COVER THE ADMINISTRATIVE EXPENSES OF THE

AUTHORITY, MEMBERS SHOULD GIVE SYMPATHETIC CONSIDERATION
TO REQUESTS FOR LOANS AND VOLUNTARY CONTRIBUTIONS.

ARTICLE 26, PARAGRAPH 2(V)

AMENDMENT: AMEND SO AS TO REQUIRE THAT THE ASSEMBLY
ADOPTS THE FINANCIAL REGULATIONS ONLY ON THE RECOMMENDA-
TION OF THE COUNCIL.

COMMENT: THIS AMENDMENT WOULD ENSURE COUNCIL INPUT
INTO THE PROCEDURE FOR ADOPTING FINANCIAL REGULATIONS.

ARTICLE 26, PARAGRAPH 2(X)

AMENDMENT: AMEND SO AS TO CLARIFY THAT BENEFITS
WILL ONLY BE SHARED WITH CONTRACTING PARTIES.

COMMENT: IN ORDER TO BENEFIT FROM THE CONVENTION,
STATES SHOULD BE REQUIRED TO ASSUME THE OBLIGATIONS OF
THE CONVENTION BY ACCEDING TO IT.

ARTICLE 26, PARAGRAPH 2(XI)

AMENDMENT: AMEND SO AS TO CLARIFY THAT THIS SUB-
PARAGRAPH REFERS ONLY TO THE PROBLEMS OF THE LAND-LOCKED
AND GEOGRAPHICALLY DISADVANTAGED STATES IN RELATION TO
"ACTIVITIES IN THE AREA" ATTRIBUTABLE TO THEIR DISAD-
VANTAGED GEOGRAPHIC LOCATION.

COMMENT: THIS AMENDMENT IS PROPOSED TO ACHIEVE
PRECISION.

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ARTICLE 26, PARAGRAPH 3

AMENDMENT: THE ENTIRE PARAGRAPH MUST BE DELETED.

COMMENT: PARAGRAPH 3 RAISES THE CRITICAL QUESTION OF
OF RESIDUAL POWERS IN THE AUTHORITY. AS DISCUSSED UNDER
ARTICLE 24, NO ORGAN OF THE AUTHORITY SHOULD EXERCISE

POWERS OTHER THAN THOSE SPECIFICALLY DELEGATED TO IT.

ARTICLE 27

(THE COMPOSITION AND VOTING PROCEDURES OF THE COUNCIL ARE OF CRITICAL IMPORTANCE, IN VIEW OF THE COUNCIL'S ROLE AS THE EXECUTIVE ORGAN. IN ITS PRESENT FORM, ARTICLE 27 IS UNACCEPTABLE AND REQUIRES FURTHER NEGOTIATION.)

ARTICLE 28, CHAPEAU

AMENDMENT: DELETE THIRD SENTENCE WHICH READS, "IN EXERCISING SUCH POWERS AND PERFORMING SUCH FUNCTIONS THE COUNCIL SHALL ACT IN A MANNER CONSISTENT WITH GENERAL GUIDELINES AND POLICY DIRECTIVES LAID DOWN BY THE ASSEMBLY."

COMMENT: THE COUNCIL WILL BE THE EXECUTIVE ORGAN OF THE AUTHORITY, DEALING WITH "ACTIVITIES IN THE AREA" ON A CONTINUOUS BASIS. AS SUCH, THE COUNCIL MUST HAVE THE SOLE RESPONSIBILITY FOR DETERMINING RESOURCE POLICIES AND CANNOT BE SUBJECT TO THE DIRECTIVES OF THE ASSEMBLY, WHICH MEETS ONLY ONCE EVERY TWO YEARS AND WILL HAVE LITTLE EXPERIENCE IN MANAGING RESOURCES.

ARTICLE 28, SUBPARAGRAPH (I)

AMENDMENT: DELETE SEMI-COLON AND ADD "AFTER APPROPRIATE ACTION BY THE TRIBUNAL;"

COMMENT: NO ACTION SHOULD BE TAKEN WITH RESPECT TO CASES OF NON-COMPLIANCE UNTIL THE TRIBUNAL HAS RENDERED A DECISION THAT A VIOLATION HAS INDEED OCCURRED.

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ARTICLE 28, SUBPARAGRAPH (IX)

(THE STATUS AND POWERS AND FUNCTIONS OF THE ENTERPRISE ARE AN INTEGRAL PART OF THE EXPLOITATION SYSTEM ELABORATED IN ARTICLE 22 AND THE BASIC CONDITIONS. THE CONTENT OF ARTICLE 28 (IX) MUST BE NEGOTIATED TOGETHER WITH THOSE PROVISIONS AND ARTICLE 35.)

ARTICLE 28, SUBPARAGRAPH (X)

AMENDMENT: INSERT "FISCAL AND ADMINISTRATIVE" BEFORE "CONTROL."

COMMENT: THE EXTENT OF THE AUTHORITY'S "CONTROL" MUST BE CLEARLY SPECIFIED IN THE BASIC CONDITIONS. HOWEVER, THE PROPOSED QUALIFICATIONS TO THE CONCEPT OF CON-

TROL ARE ALSO NECESSARY IN THIS PROVISION.

ARTICLE 28, SUBPARAGRAPH (XI)

AMENDMENT: DELETE THIS SUBPARAGRAPH.

COMMENT: NO ORGAN OF THE AUTHORITY SHOULD HAVE THE

POWER TO IMPOSE PRICE OR PRODUCTION CONTROLS.

ARTICLE 28, SUBPARAGRAPH(XII)

AMENDMENT: "ESTABLISH AND ADMINISTER A SYSTEM FOR THE ADOPTION AND APPLICATION OF RULES, REGULATIONS AND PROCEDURES RECOMMENDED BY THE TECHNICAL COMMISSION AND ANY AMENDMENTS THERETO. RULES, REGULATIONS AND PROCEDURES SHALL BE RESTRICTED TO THOSE SUBJECTS SPECIFICALLY PROVIDED FOR IN THE BASIC CONDITIONS SET FORTH IN ANNEX I TO THIS PART. UPON THEIR APPROVAL BY THE COUNCIL THEY SHALL BE SUBMITTED DIRECTLY TO ALL STATES PARTIES TO THIS CONVENTION. SUCH RULES, REGULATIONS AND PROCEDURES SHALL BECOME EFFECTIVE 90 DAYS AFTER SUBMISSION, UNLESS IN THE MEANTIME MORE THAN ONE-THIRD OF THE STATES PARTIES TO THIS CONVENTION REGISTER THEIR DISAPPROVAL WITH THE AUTHORITY. THIS TIME PERIOD SHALL BE SUSPENDED IN RE-CONFIDENTIAL

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SPECT OF ANY RULE, REGULATION OR PROCEDURE THE VALIDITY OF WHICH HAS BEEN CHALLENGED IN THE TRIBUNAL, PENDING A TRIBUNAL DECISION ON THE MATTER."

COMMENT: THE RULE-MAKING SYSTEM SHOULD PROVIDE FOR EXPERT INPUT AT THE LEVEL OF BOTH THE TECHNICAL COMMISSION AND INDIVIDUAL GOVERNMENTS. MOREOVER, SUBPARAGRAPH (XII) MUST EITHER PROVIDE A DETAILED LIST OF THE SUBJECTS FOR THE AUTHORITY'S REGULATIONS, OR SPECIFY THAT ONLY THOSE SUBJECTS ENUMERATED IN THE BASIC CONDITIONS CAN BE CONSIDERED FOR THE AUTHORITY'S REGULATIONS.

ARTICLE 28, SUBPARAGRAPH (XIII)

AMENDMENT: TRANSFER THIS POWER TO THE OPERATIONS COMMISSION (SEE DISCUSSION OF ARTICLE 29).

COMMENT: IN THIS SUBPARAGRAPH, THE MEANING OF "IN CONNEXION WITH OPERATIONS PURSUANT TO THIS CONVENTION" IS UNCLEAR. IF THIS PHRASE WERE RESTRICTED TO "ACTIVITIES IN

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Disposition Authority: GarlanWA
Disposition Case Number: n/a
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Disposition History: n/a
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From: STATE
Handling Restrictions: n/a
Image Path:
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Legacy Key: link1975/newtext/t197509104/baaaabbu.tel
Line Count: 697
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Office: ORIGIN DLOS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 13
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: GarlanWA
Review Comment: n/a
Review Content Flags: ANOMALY
Review Date: 27 MAY 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <27 MAY 2003 by BoyleJA>; APPROVED <15 JUL 2003 by GarlanWA>
Review Markings:

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Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: n/a
TAGS: PLOS, XX
To: MOSCOW
PARIS
TOKYO
LONDON
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006

